

# **EXHIBIT A**

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -  
ANDY WARHOL FOUNDATION FOR THE )  
VISUAL ARTS, INC., )  
Petitioner, )  
v. ) No. 21-869  
LYNN GOLDSMITH, ET AL., )  
Respondents. )  
- - - - -

Pages: 1 through 122

Place: Washington, D.C.

Date: October 12, 2022

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

[www.hrcourtreporters.com](http://www.hrcourtreporters.com)

1 MR. MARTINEZ: -- even with respect to  
2 the licensing use, you'd still need to look at  
3 Factor 1, which would look at -- at the purpose  
4 and character of the use. And that would  
5 certainly encompass the fact that Warhol's use,  
6 the image that's being licensed, was  
7 transformative and created -- and -- and -- and  
8 infused a new meaning or message on top of  
9 Goldsmith's original work.

10 JUSTICE SOTOMAYOR: That I give you --  
11 I spot you. It should be considered.

12 MR. MARTINEZ: Well --

13 JUSTICE SOTOMAYOR: The Second Circuit  
14 didn't. But then what do I do with the rest of  
15 Factor 1, the purpose and use and -- and  
16 character of the use? Because that's not just  
17 up to the author. That's up to what was made,  
18 what use was made of Orange Prince. It was a  
19 highly commercial use. Goldsmith also licensed  
20 her photographs to magazines, just as Warhol's  
21 estate did.

22 So how is it that your 2006 license  
23 and Goldsmith's photographs do not share the  
24 same commercial purpose?

25 MR. MARTINEZ: Well, I think that it's

1 -- it's true that -- that there is a -- a  
2 commercial purpose and so that might be a factor  
3 that would cut against us when assessing Factor  
4 1. We think that the -- the -- the quite  
5 substantial and -- and this in our view  
6 undisputed transformation in meaning or message  
7 --

8 JUSTICE SOTOMAYOR: Yeah, but for that  
9 --

10 MR. MARTINEZ: -- would -- would trump  
11 that.

12 JUSTICE SOTOMAYOR: -- don't we have  
13 to look at the context of the use?

14 MR. MARTINEZ: I -- I think you would  
15 look at all -- all the factors. But --

16 JUSTICE SOTOMAYOR: Right.

17 MR. MARTINEZ: -- but, again, Your  
18 Honor, I think your point -- it's not a small  
19 point to say that the Second Circuit got this  
20 wrong by banishing transformative meaning or  
21 message. That's a huge deal.

22 JUSTICE SOTOMAYOR: Assume that it got  
23 it wrong. The question is --

24 MR. MARTINEZ: How would we win -- how  
25 would we still win?